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seeks and obtains from another authority to sell timber belonging to the latter becomes a quasi agent of the latter, and assumes the duty of exercising the utmost good faith towards him.

[Ed. Note.—For cases in point, see vol. 8, Cent. Dig. Brokers, §§ 16-24; vol. 40, Cent. Dig. Principal and Agent, §§ 132-136.]

**2. Same—Fraud of Agent—Rights of Principal.**—Where defendant obtained authority from plaintiff to sell timber for the latter, and procured purchasers at the price named by plaintiff, but represented to plaintiff that he made the sale at a much less price and could not get the price named by plaintiff, and thus induced plaintiff to convey the timber to the purchasers at the less price, and appropriated the balance paid for the timber by the purchasers to himself, under a secret agreement with them, the transaction was a fraud on plaintiff, and he was entitled to equitable relief.

[Ed. Note.—For cases in point, see vol. 8, Cent. Dig. Brokers, § 146.]

**3. Same—Actions for Agent's Fraud—Decree.**—Where a principal authorized his agent to sell timber for \$2,000, and the agent procured purchasers at that price, but fraudulently represented to the principal that he could only secure \$1,250, of which he was to retain \$50 for his commissions, and induced the principal to convey the land to the purchasers for \$1,200, intending to appropriate the balance of the purchase price to himself under a secret agreement with the purchasers, and the principal discovered the fraud and sued for a rescission of the contract, and the purchasers offered to abide by their contract and to pay the full price of \$2,000 as the court might decree, the court would direct the payment of \$1,950 to the principal and of \$50 to the agent.

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BELLENOT *v.* LAUBE'S EX'R et al.

Feb. 2, 1906.

[52 S. E. 698.]

**1. Party Walls—Creation—Conveyances.**—Where the owner of a lot upon which a double brick building was erected conveyed one half of the lot to one person and the other half to another person on the same day and by separate deeds, each of which described the lot conveyed as having a brick tenement thereon and as bounded by the property that day conveyed to the grantee in the other deed, the dividing wall between the two tenements became a party wall, in which each grantee had the rights incident to that kind of a dividing wall.

[Ed. Note.—For cases in point, see vol. 38, Cent. Dig. Party Walls, § 10.]

**2. Partition—Sale—Title of Purchaser—Restriction by Decree.**—Where a suit is brought to partition premises bounded by a party

wall, and the deed under which the parties to the suit claim, as well as the decree of sale and the decree confirming the sale, describe the property as beginning "at the center of the partition wall between it and the adjoining tenement on the east," a deed of the commissioner, omitting the quoted reference to the point of beginning, did not enlarge the estate of the purchaser, so as to entitle her to the whole wall, in accordance with a call of the deed designating the beginning point as a certain distance from a street.

**3. Same—Notice.**—The records of the court and the papers in partition proceedings are notice to the purchaser at partition sale of a variance between the description of the property actually subject to the proceedings and the description contained in the commissioner's deed.

**4. Party Walls—Presumptions.**—Every wall and separation between two buildings is presumed to be a common or party wall, if the contrary be not shown.

[Ed. Note.—For cases in point, see vol. 38, Cent. Dig. Party Walls. §§ 2, 60.]

**5. Same—Rights of Proprietors—Increase of Height of Wall.**—One owner of a party wall may erect a new building on his lot and carry the party wall up to a height sufficient for his purposes.

**6. Same—Rebuilding of Wall—Division of Costs.**—Where a party wall is in a state of ruin, so that rebuilding is necessary, one party may compel the other by action to contribute to the expense of rebuilding the wall, but if the new wall is made wider or higher, or if the old wall was sufficient for the purposes for which it was used, the expense of the increased height or width of the wall in the first case, or of the rebuilding of the wall in the second, must be borne by the party at whose instance the work is done.

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NORFOLK & W. RY. CO. *v.* BELL.

Feb. 2, 1906.

[52 S. E. 700.]

**1. Master and Servant—Duties of Master—Safe Appliances.**—The master, in selecting instrumentalities for his work, should keep reasonably abreast with improved methods, and should be reasonably prudent and careful to select appliances reasonably adequate and proper for their respective uses, but is not bound to furnish the best-known appliances or those used by some other employer in the same line of business.

[Ed. Note.—For cases in point, see vol. 34, Cent. Dig. Master and Servant, §§ 181-192.]

**2. Same—Negligence of Master—Evidence.**—On the issue of the failure of a master to exercise ordinary care to provide reasonably safe appliances, a witness having sufficient knowledge of the subject